



December 22, 1999

Ms. Elizabeth Lutton  
Senior Attorney  
City of Arlington  
Mail Stop 03-0100  
501 West Main Street  
Arlington, Texas 76010

OR99-3719

Dear Ms. Lutton:

The City of Arlington (the "city") received two letter rulings from this office under the Public Information Act (the "act"), chapter 552 of the Government Code. You now ask whether those rulings are in conflict with each other. Your question was assigned ID# 130681.

Open Records Letter No. 99-1945 (1999) dealt with a request from an individual associated with a newspaper for information relating to sexual harassment cases involving city employees for a specified period. With respect to materials in one of the sexual harassment cases, Open Records Letter Nos. 99-1945 ruled, in accordance with the common law privacy principles set out in *Morales v. Ellen*, 840 S.W. 2d 519 (Tex. App.-- El Paso 1992, writ denied), that the city must withhold responsive information except for a summary of the investigation, which was ordered released with the identities of victim's and witnesses redacted.

Open Records Letter No. 99-2494 (1999) dealt with a request from an individual involved in the city sexual harassment investigation which had been treated in Open Records Letter No. 99-1945 as discussed above. The request was for, *inter alia*, an affidavit of a witness made in connection with the investigation. Open Records Letter No. 99-2494 found that the affidavit, which had been ordered withheld in its entirety in Open Records Letter No. 99-1945, must be released with some material redacted in order to protect the privacy of another individual. We understand you to contend that the two rulings are inconsistent with respect to their treatment of this affidavit. In our opinion, the differing treatments by Open Records Letter Nos. 99-1945 and 99-2494 of the affidavit in question were proper and were due to the different positions of the requestors *vis a vis* the requested information.

The requestor in Open Records Letter No.99-2494 was a victim or witness in the sexual harassment investigation at issue. As the ruling explained, while identifying information as to the requestor in the investigative materials at issue was protected from release to the *public* under the common law privacy principles set out in the *Ellen* decision, the requestor had a special right of access to such materials as were protected from *public* release by rules intended to protect her own privacy. See Gov't Code § 552.023 ("Special Right of Access to Confidential Information"). The requestor's special right of access in this instance did not, however, extend to materials implicating the privacy interests of others. Consequently, Open Records Letter No.99-2494 ordered that the affidavit in question must be released to the requestor pursuant to her special right of access, except that the portions of the affidavit which implicated the privacy interests of others must be withheld from the requestor under common law privacy principles set out in *Ellen*.

In contrast, Open Records Letter No. 99-1945, dealt only with the issue of release of the requested materials to the general public. Following the *Ellen* ruling, as discussed above, it ordered withholding of all responsive materials except for the summary of the investigation, which it ordered released with witness and victim identities redacted. We believe that our previous rulings are correct for release of information to the particular requestors involved in each case.

We trust that this letter explains the basis of the differing treatments of the affidavit at issue in Open Records Letter Nos. 99-1945 and 99-2494. If you have further questions in this matter, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref.: ID# 130681

Encl: Submitted Documents

cc: Ms. Laura Parent  
213 Shadowcreek Lane  
Burleson, Texas 76028  
(w/o enclosures)